

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

CHAMBERS OF  
WILLIAM G. BASSLER  
SENIOR JUDGE

MARTIN LUTHER KING JR. FEDERAL  
BUILDING & U.S. COURTHOUSE  
50 WALNUT ST., ROOM 5060  
P.O. BOX 999  
NEWARK, NJ 07101-0999  
973-645-2981

October 12, 2005

Re: Canadian National Railway Company v. South Central Timber  
Company, Inc., Civ. No. 05-709 (WGB)

John K. Fiorilla  
CAPEHART & SCATCHARD, P.A.  
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Mount Laurel, New Jersey 08054

Counsel for Plaintiff

South Central Timber Company  
P.O. Box 245  
21 Dividing Ridge Road  
Duck Hill, Mississippi 38925

LETTER ORDER FILED WITH THE CLERK OF THE COURT  
DENYING THE PLAINTIFF'S APPLICATION FOR ENTRY OF  
DEFAULT JUDGMENT

Dear Counsel and Defendant:

This Court has received and considered the application of the Plaintiff in this action for entry of a default judgment on its claim against the Defendant. Based on the insufficiency of Plaintiff's submissions, the Court concludes that the application must be **denied**.

Generally, an application to the Court for a default judgment must contain evidence, by affidavit and documents, of the following: (1) the entry of a default; (2) the absence of any appearance by any party to be defaulted; (3) that the defendant is neither an infant nor incompetent; (4) that the defendant has been validly served with all pleadings, including the request for the default judgment; (5) the amount of the judgment and how it was calculated; and (6) an Affidavit of non-

military service in compliance with the Soldiers' and Sailors' Relief Act, 50 U.S.C. App. §§ 501, et seq., 520; see Fed. R. Civ. P. 55(b), 54(b); L. Civ. R. 7.1, 58.1.

If the Court determines that a defendant is in default, the factual allegations of the complaint, except for those relating to damages, will be taken as true. Fehlhaber v. Indian Trails, Inc., 425 F.2d 715, 717 (3d Cir. 1970). The amount of damages is not deemed admitted by a defaulting party, Fed. R. Civ. P. 8(d), and a separate evidentiary showing must be made as to damages where the judgment sought is not for a sum certain. See Fehlhaber, 425 F.2d at 717. A damages hearing may be necessary if the documentation is insufficient to satisfy the Court as to the level of damages. Magette v. The Daily Post, 535 F.2d 856 (3d Cir. 1976); see also L. Civ. R. 54.1(b).

The Court finds that the Plaintiff has not made the required showing. The Plaintiff has failed to provide the Court with evidence showing that the Defendant has been validly served with all pleadings, including the request for the default judgment.

For the foregoing reasons, the Plaintiff's motion for a default judgment is **denied without prejudice**. If the Plaintiff wishes to reapply for a default judgment, it must make a formal motion.

**So Ordered.**

Very truly yours,

/S/ WILLIAM G. BASSLER  
William G. Bassler, U.S.S.D.J.